

1 Guy R. Gruppie (SBN 155437)  
Gina E. Och (SBN 170520)  
2 Carolyn A. Mathews (SBN 137430)  
**MURCHISON & CUMMING, LLP**  
3 801 South Grand Avenue, 9th Floor  
Los Angeles, California 90017-4613  
4 Telephone: (213) 623-7400  
Facsimile: (213) 623-6336  
5 Email: [ggruppie@murchisonlaw.com](mailto:ggruppie@murchisonlaw.com)  
[goch@murchisonlaw.com](mailto:goch@murchisonlaw.com)  
6 [cmathews@murchisonlaw.com](mailto:cmathews@murchisonlaw.com)

7 Attorneys for Defendant,  
CAMPAGNOLO NORTH AMERICA, INC.,  
8 a corporation

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11

12 MITCHELL EGGERS, an individual,

13 Plaintiff,

14 vs.

15 CAMPAGNOLO NORTH AMERICA,  
INC., a corporation, B&L BIKE AND  
16 SPORTS, INC., a corporation, et al.,

17 Defendants.

CASE NO. 08 CV 0198 JM LSP

**DEFENDANT CAMPAGNOLO  
NORTH AMERICA, INC.'S  
ANSWER TO COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

Judge: Hon. Jeffrey T. Miller  
Ctm: 6

18  
19 Defendant, CAMPAGNOLO NORTH AMERICA, INC., responds to the complaint of  
20 plaintiff, MITCHELL EGGERS, for itself alone, and admits, denies and alleges as follows:

21 **JURISDICTION**

22 1. In answering paragraph 1, this answering defendant lacks sufficient information to  
23 either admit or deny the allegations contained therein and, on that basis, generally and  
24 specifically denies each and every allegation contained therein.

25 2. In answering paragraph 2, this answering defendant lacks sufficient information to  
26 either admit or deny the allegations contained therein and, on that basis, generally and  
27 specifically denies each and every allegation contained therein, and respectfully refers all  
28 questions of law to the Trial of this matter.



**FIRST CAUSE OF ACTION**

**(Negligence (Products Liability) As Against Defendants CAMPAGNOLO**

**NORTH AMERICA, INC., B&L BIKE AND SPORTS, INC.**

**and Does 1 through 10, Inclusive)**

10. In answer to the paragraph 10, this answering defendant repeats, reiterates and realleges each of the responses set forth in paragraphs 1 through 9 of this Answer to Complaint with the same force and effect as if they were set forth fully and at length herein.

11. In answering paragraph 11, this answering defendant lacks sufficient information to either admit or deny the allegations contained therein and, on that basis, generally and specifically denies each and every allegation contained therein, and respectfully refers all questions of law to the Trial of this matter.

12. In answering paragraph 12, this answering defendant denies each and every allegation contained therein as it relates or refers to CAMPAGNOLO NORTH AMERICA INC. and denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 as to co-defendant, B&L BIKE AND SPORTS, INC. and respectfully refers all questions of law to the Trial of this matter.

13. In answering paragraph 13, this answering defendant denies each and every allegation contained therein as it relates or refers to CAMPAGNOLO NORTH AMERICA INC. and denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 as to co-defendant, B&L BIKE AND SPORTS, INC. and respectfully refers all questions of law to the Trial of this matter.

14. In answering paragraph 14, this answering defendant denies each and every allegation contained therein as it relates or refers to CAMPAGNOLO NORTH AMERICA INC. and denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 as to co-defendant, B&L BIKE AND SPORTS, INC. and respectfully refers all questions of law to the Trial of this matter.

15. In answering paragraph 15, this answering defendant denies each and every allegation contained therein as it relates or refers to CAMPAGNOLO NORTH AMERICA

1 INC. and denies knowledge or information sufficient to form a belief as to the truth of the  
2 allegations in paragraph 15 as to co-defendant, B&L BIKE AND SPORTS, INC. and  
3 respectfully refers all questions of law to the Trial of this matter.

4 16. In answering paragraph 16, this answering defendant denies each and every  
5 allegation contained therein.

6 17. In answering paragraph 17, this answering defendant denies each and every  
7 allegation contained therein.

8 18. In answering paragraph 18, this answering defendant denies each and every  
9 allegation contained therein.

10  
11 **SECOND CAUSE OF ACTION**

12 **(Strict Products Liability As Against Defendants CAMPAGNOLO NORTH**  
13 **AMERICA, INC., B&L BIKE AND SPORTS, INC.**

14 **and DOES 1 through 10, Inclusive)**

15 19. In answer to the paragraph 19, this answering defendant repeats, reiterates and realleges  
16 each of the responses set forth in paragraphs 1 through 18 of this Answer to Complaint with the same  
17 force and effect as if they were set forth fully and at length herein.

18 20. In answering paragraph 20, this answering defendant denies each and every  
19 allegation contained therein as it relates or refers to CAMPAGNOLO NORTH AMERICA  
20 INC. and denies knowledge or information sufficient to form a belief as to the truth of the  
21 allegations in paragraph 20 as to co-defendant, B&L BIKE AND SPORTS, INC. and  
22 respectfully refers all questions of law to the Trial of this matter.

23 21. In answering paragraph 21, this answering defendant denies each and every  
24 allegation contained therein.

25 22. In answering paragraph 22, this answering defendant denies each and every  
26 allegation contained therein.

27 23. In answering paragraph 23, this answering defendant denies each and every  
28 allegation contained therein.

1       24. In answering paragraph 24, this answering defendant denies each and every  
2 allegation contained therein.

3       25. In answering paragraph 25, this answering defendant denies each and every  
4 allegation contained therein.

5       26. In answering paragraph 26, this answering defendant denies each and every  
6 allegation contained therein.

7       27. In answering paragraph 27, this answering defendant denies each and every  
8 allegation contained therein.

9       28. In answering paragraph 28, this answering defendant denies each and every  
10 allegation contained therein.

11  
12                   **THIRD CAUSE OF ACTION**

13       **(Breach of Express and Implied Warranties By Plaintiff As Against All Defendants,**  
14                   **including Does 1 through 10, Inclusive)**

15       29. In answer to the paragraph 29, this answering defendant repeats, reiterates and realleges  
16 each of the responses set forth in paragraphs 1 through 28 of this Answer to Complaint with the same  
17 force and effect as if they were set forth fully and at length herein.

18       30. In answering paragraph 30, this answering defendant lacks sufficient information  
19 to either admit or deny the allegations contained therein and, on that basis, generally and  
20 specifically denies each and every allegation contained therein, and respectfully refers all  
21 questions of law to the Trial of this matter.

22       31. In answering paragraph 31, this answering defendant denies each and every  
23 allegation contained therein.

24       32. In answering paragraph 32, this answering defendant denies each and every  
25 allegation contained therein.

26       33. In answering paragraph 33, this answering defendant denies each and every  
27 allegation contained therein.

28 //

1        34. In answering paragraph 34, this answering defendant denies each and every  
2 allegation contained therein.

3        35. In answering paragraph 35, this answering defendant denies each and every  
4 allegation contained therein.

5        36. In answering paragraph 36, this answering defendant denies each and every  
6 allegation contained therein.

7        37. In answering paragraph 37, this answering defendant denies each and every  
8 allegation contained therein.

9

10

**FOURTH CAUSE OF ACTION**

11

**(False Representation Under Restatement of Torts 2<sup>nd</sup> § 402(B) By Plaintiff As**

12

**Against All Defendants, including DOES 1 through 10, Inclusive)**

13

14        38. In answer to the paragraph 38, this answering defendant repeats, reiterates and realleges  
15 each of the responses set forth in paragraphs 1 through 37 of this Answer to Complaint with the same  
16 force and effect as if they were set forth fully and at length herein.

16

17        39. In answering paragraph 39, this answering defendant lacks sufficient information  
18 to either admit or deny the allegations contained therein and, on that basis, generally and  
19 specifically denies each and every allegation contained therein, and respectfully refers all  
20 questions of law to the Trial of this matter.

20

21        40. In answering paragraph 40, this answering defendant lacks sufficient information  
22 to either admit or deny the allegations contained therein and, on that basis, generally and  
23 specifically denies each and every allegation contained therein, and respectfully refers all  
24 questions of law to the Trial of this matter.

24

25        41. In answering paragraph 41, this answering defendant denies each and every  
26 allegation contained therein.

26

27        42. In answering paragraph 42, this answering defendant denies each and every  
28 allegation contained therein.

28

//

1       43. In answering paragraph 43, this answering defendant denies each and every  
2 allegation contained therein.

3       44. In answering paragraph 44, this answering defendant denies each and every  
4 allegation contained therein.

5       45. In answering paragraph 45, this answering defendant denies each and every  
6 allegation contained therein.

7       46. In answering paragraph 46, this answering defendant denies each and every  
8 allegation contained therein.

9  
10                                   **FIFTH CAUSE OF ACTION**

11                           **(Failure to Warn By Plaintiff As Against All Defendants,**  
12                                   **Including Does 1 Through 10, Inclusive)**

13       47. In answer to the paragraph 47, this answering defendant repeats, reiterates and realleges  
14 each of the responses set forth in paragraphs 1 through 46 of this Answer to Complaint with the same  
15 force and effect as if they were set forth fully and at length herein.

16       48. In answering paragraph 48, this answering defendant denies each and every  
17 allegation contained therein.

18       49. In answering paragraph 49, this answering defendant denies each and every  
19 allegation contained therein.

20       50. In answering paragraph 50, this answering defendant denies each and every  
21 allegation contained therein.

22       51. In answering paragraph 51, this answering defendant denies each and every  
23 allegation contained therein.

24       52. In answering paragraph 52, this answering defendant denies each and every  
25 allegation contained therein.

26       53. In answering paragraph 53, this answering defendant denies each and every  
27 allegation contained therein.

28 //

**AFFIRMATIVE DEFENSES**

By way of separate and affirmative defenses to plaintiff MITCHELL EGGERS' complaint, this answering defendant asserts and alleges the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

54. As a first and separate affirmative defense to the complaint, this answering defendant alleges that each cause of action is barred by the applicable statute of limitations.

**SECOND AFFIRMATIVE DEFENSE**

55. As a second and separate affirmative defense to the complaint, this answering defendant alleges that plaintiff's complaint fails to state a claim upon which relief can be granted as against this answering defendant.

**THIRD AFFIRMATIVE DEFENSE**

56. As a third and separate affirmative defense to the complaint, this answering defendant alleges that plaintiff and/or his agents acted negligently, recklessly, or intentionally in and about the matters alleged herein and to the extent that plaintiff seeks recovery for the alleged negligence, reckless, and/or intentional acts and/or omissions of this answering defendant, recovery should be offset to the extent of plaintiff's own negligent, reckless, and/or intentional actions and/or omissions.

**FOURTH AFFIRMATIVE DEFENSE**

57. As a fourth and separate affirmative defense to the complaint, this answering defendant alleges that plaintiff's damages, if any, were proximately caused by the negligent, reckless, and/or intentional acts of third parties as to whom this answering defendant had neither the right nor the duty nor the opportunity to exercise control and who acted without the knowledge, participation, approval, or ratification of this answering defendant.

**FIFTH AFFIRMATIVE DEFENSE**

58. As a fifth and separate affirmative defense to the complaint, this answering defendant alleges that plaintiff is barred from recovering on each and every purported cause of action by reason of waiver.

1                                   **SIXTH AFFIRMATIVE DEFENSE**

2           59.     As a sixth and separate affirmative defense to the complaint, this answering  
3 defendant alleges that all of plaintiff's causes of action are barred because plaintiff and/or his  
4 agents had the opportunity to and did fully inspect, approve, and accept the product in question  
5 and its condition, and payment(s) was/were made pursuant to the terms and conditions of any  
6 contract between said persons.

7                                   **SEVENTH AFFIRMATIVE DEFENSE**

8           60.     As a seventh and separate affirmative defense to the complaint, this answering  
9 defendant alleges that plaintiff could have, by the exercise of reasonable diligence, limited or  
10 prevented his damages, if any, as a result of the alleged wrongful acts set forth in the complaint  
11 and that he has failed or refused to do so. Such failure or refusal on the part of plaintiff  
12 constitutes a failure to mitigate his damages.

13                                  **EIGHTH AFFIRMATIVE DEFENSE**

14           61.     As an eighth and separate affirmative defense to the complaint, this answering  
15 defendant alleges that the damages allegedly sustained by plaintiff were the proximate result of  
16 plaintiff's or others' misuse of the product or subsequent modification, repair, and/or  
17 maintenance of the product involved.

18                                  **NINTH AFFIRMATIVE DEFENSE**

19           62.     As a ninth and separate affirmative defense to the complaint, this answering  
20 defendant alleges that it complied with all of the terms, conditions and requirements of any  
21 contract, performed its obligations in a manner consistent with high quality, and at all times  
22 acted in good faith.

23                                  **ELEVENTH AFFIRMATIVE DEFENSE**

24           62.     As an eleventh and separate affirmative defense to the complaint, this answering  
25 defendant alleges that the conduct of this answering defendant and the warnings, labeling,  
26 instructions, and information of this product at all times complied with and conformed to  
27 relevant and applicable statutes and regulations.

28    //

1                                   **TWELFTH AFFIRMATIVE DEFENSE**

2           63.     As a twelfth and separate affirmative defense to the complaint, this answering  
3 defendant alleges that the losses and damages allegedly sustained by plaintiff, if any, were  
4 proximately caused by the intervening and superseding acts of others, which intervening and  
5 superseding acts bar and/or diminish plaintiff's recovery, if any, against this answering  
6 defendant.

7                                   **THIRTEENTH AFFIRMATIVE DEFENSE**

8           64.     As a thirteenth and separate affirmative defense to the complaint, this answering  
9 defendant alleges that prior to and at the time of the sale herein, there was attached to the goods  
10 a conspicuous writing which clearly informed the buyer and/or the plaintiff, in simple and  
11 concise language, that the goods were being sold pursuant to a limited warranty which is limited  
12 to repair and replacement of conditions and/or components covered under the warranty; that the  
13 entire risk as to the quality and performance of the goods was with the buyer and/or plaintiff;  
14 and that should the goods prove defective following their purchase, the buyer and/or plaintiff,  
15 and not the manufacturer, distributor, or retailer, assumed the entire cost of all necessary  
16 servicing or repair. As a result, this answering defendant effectively disclaimed any implied  
17 warranties, including, but not limited to, recovery of consequential damages, the implied  
18 warranty of merchantability and implied warranty of fitness for a particular purpose, and by that  
19 sale, plaintiff effectively waived any such warranty.

20                                   **FOURTEENTH AFFIRMATIVE DEFENSE**

21           65.     As a fourteenth and separate affirmative defense to the complaint, this answering  
22 defendant alleges that any defect or nonconformity of which the plaintiff complains in this  
23 matter was proximately caused by the unauthorized or unreasonable use of the goods by the  
24 plaintiff following sale and delivery thereof by this answering defendant to plaintiff and/or  
25 buyer.

26 //

27 //

28 //

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 66. As a fifteenth and separate affirmative defense to the complaint, this answering  
3 defendant alleges that that plaintiff's injuries, losses, and/or damages, if any, allegedly  
4 sustained, were and are the result of an open, obvious, and apparent danger or condition which  
5 was known to and recognized by the plaintiff, but who nevertheless knowingly, willingly,  
6 intentionally, and voluntarily exposed himself to said danger or condition, thereby assuming the  
7 risk of accident, injury, and damage.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 67. As a sixteenth and separate affirmative defense to the complaint, this answering  
10 defendant alleges that that if plaintiff was injured by any product supplied by this answering  
11 defendant, this answering defendant nonetheless did not breach any duty to plaintiff and it is not  
12 liable for those injuries claimed because plaintiff is a knowledgeable user of the product.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 68. As a seventeenth and separate affirmative defense to the complaint, this  
15 answering defendant alleges that the risks, if any, associated with the subject product were  
16 disclosed to plaintiff prior to plaintiff's use of this product.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 69. As an eighteenth and separate affirmative defense to the complaint, this answering  
19 defendant alleges that plaintiff failed to give notice to this answering defendant of any alleged  
20 breach of warranty in the form and manner required by California Commercial Code § 2607.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 70. As a nineteenth and separate affirmative defense to the complaint, this answering  
23 defendant alleges that this answering defendant did not intentionally make any false or untrue  
24 representations to the general public, including this plaintiff, about the product in question, nor  
25 did it authorize or ratify any alleged false or untrue representations by any other defendant,  
26 person, or entity.

27 //

28 //

**TWENTIETH AFFIRMATIVE DEFENSE**

71. As a twentieth and separate affirmative defense to the complaint, this answering defendant alleges that this Court lacks jurisdiction to adjudicate this controversy.

**WHEREFORE**, defendant CAMPAGNOLO NORTH AMERICA, INC. prays that judgment be entered in favor of defendant CAMPAGNOLO NORTH AMERICA, INC., and against plaintiff MITCHELL EGGERS, that plaintiff, MITCHELL EGGERS takes nothing by the complaint herein, and that defendant CAMPAGNOLO NORTH AMERICA, INC. has judgment for its costs of suit incurred herein.

DATED: March 14, 2008

**MURCHISON & CUMMING, LLP**

By: s/ Carolyn A. Mathews  
GUY R. GRUPPIE  
GINA E. OCH  
► CAROLYN A. MATHEWS  
Attorneys for Defendant,  
CAMPAGNOLO NORTH AMERICA, INC.,  
a corporation

**CERTIFICATE OF SERVICE**

I, Marjorie K. DeJohnette, declare:

I am over the age of 18 years and not a party to the within-entitled action. I am employed in the County of Los Angeles, State of California, within which count ant state the subject service occurred. My business address is 801 South Grand Avenue, 9<sup>th</sup> Floor, Los Angeles, California.

The undersigned certifies that the foregoing document entitled **DEFENDANT CAMPAGNOLO NORTH AMERICA, INC.'S ANSWER TO COMPLAINT [DEMAND FOR JURY TRIAL]** was filed electronically in compliance with Local Rule 54(c). As such, said document was served on counsel identified on the attached Service List who are deemed to have consented to electric service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of March, 2008, at Los Angeles, California

s/ Marjorie K. DeJohnette  
MARJORIE K. DEJOHNETTE

**SERVICE LIST**  
**08 CV 0198 JM LSP**

Adam K. Shea, Esq. Attorneys for Plaintiff,  
PANISH, SHEA & BOYLE, LLP Michell Eggers  
11111 Santa Monica Boulevard, Suite 700  
Los Angeles, CA 90025  
Telephone: (310) 477-1700  
Facsimile: (310) 477-1699

GRG\28385\PLD\ATC-031208-GEO

08 CV 0198 JM LSP